ally. And since the interpretation which makes it impossible to waive a jury is due to an old conception no longer accepted, the theory of public interest should be limited as closely as possible in its application.

DOWER AS SUBJECT TO INHERITANCE TAX. — An important question in the construction of inheritance tax laws is whether dower comes within their scope. A recent Tennessee decision holds that under a statute taxing property passing "under the intestate laws" dower is not taxable. *Crenshaw* v. *Moore*, 137 S. W. 924 (Tenn.).[1] Illinois under an identical statute adopted the contrary rule.[2]

In deciding the question as to what is covered by inheritance taxes, the general intention of legislatures in passing such laws must be subordinated to the meaning of the words used to express that intention. The mere fact that the transfer of property occurs on the death of an intestate does not show that it passes under "intestate laws." The term "intestate laws" refers only to the laws "governing intestate succession." [3] Clearly all property of an intestate is not subject to the inheritance tax, as for example that which is applied to the payment of the debts of the deceased; for "it is recognized by . . . courts generally that a tax of this character is not a tax on property as such but one upon the right of succession." [4]

Is dower a form of succession? Its origin is probably to be found in an early Germanic custom of the husband's giving the wife a *dos* on marriage.[5] In Saxon times the widow was supported wholly out of the personal estate, and not until the Norman conquest did dower in land arise. Blackstone says that the reason our law adopted it was "for the sustenance of the wife, and the nurture and education of the younger children." [6] The right has always been treated with the greatest solicitude until modern times,[7] and as far back as *Magna Charta*, the widow was freed from the burden of fine and relief, to which all heirs and alienees were subject.[8] This early special privilege marks a difference between inheritance and dower which is due to the complete lack of connection between dower and the rules of descent; and in fact the widow's estate is a temporary dislocation of these rules. Furthermore before the husband's death the right to dower, although not vested,[9] is still a contingent right of sufficient importance to be a subject of judicial protection,[10]

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[1] The same conclusion has been reached under a code. Succession of Marsal, 118 La. 211. And it has been so held with respect to curtesy. *In re* Starbuck's Estate, 63 N. Y. Misc. 156, 116 N. Y. Supp. 1030, aff. 137 N. Y. App. Div. 866, 122 N. Y. Supp. 584.

[2] Billings *v.* People, 189 Ill. 472, 59 N. E. 798.

[3] See *In re* Joyslin's Estate, 76 Vt. 88, 92, 56 Atl. 281.

[4] See *In re* Kennedy's Estate, 157 Cal. 517, 523, 108 Pac. 280, 282.

[5] See 1 SCRIBNER, DOWER, 2 ed., ch. 1, § 5.

[6] See BL. COMM., Bk. II., § 129.

[7] See 1 SCRIBNER, DOWER, 2 ed., ch. 1, §§ 32, 33.

[8] See *id.*, § 15.

[9] Virgin *v.* Virgin, 91 Ill. App. 188; Boyd *v.* Harrison, 36 Ala. 533. But see 2 SCRIBNER, DOWER, 2 ed., ch. 1, §§ 7–18.

[10] Atwood *v.* Arnold, 23 R. I. 609, 51 Atl. 216.

while the expectant heir's right is not recognized.[11] But more fundamentally, inheritance or succession[12] are the terms applied to the devolution and distribution of the real and personal property of an estate[13] which remains after all liabilities have been settled.[14] Dower on the other hand is itself an obligation of the estate created by the law. It is not part of the assets to be distributed; and so important an obligation is it considered that it must be satisfied not only prior to the distribution but even in preference to the other debts of the deceased.[15] This finally must be conclusive proof that the widow is really a creditor and in no sense a distributee,[16] and hence that dower is not a form of succession.[17]

The above reasoning can be supported by an analogy. It has been held that "a homestead right . . . is not a right which vests under the law by succession. It is a right bestowed by the beneficence of the law of this state for the benefit of the family "[18] and hence is not subject to an inheritance tax.[19] The same principle is equally applicable to the right of dower.

RECENT CASES.

ACCORD AND SATISFACTION — VALIDITY — RETENTION OF SUM OFFERED AS FULL SETTLEMENT OF ANOTHER'S DEBT. — The father of a debtor wrote to the creditor, offering, in full settlement of the debt, an amount less than that of the debt, and enclosing a draft for that amount. The creditor cashed the draft, and wrote that he had placed the sum on account. *Held*, that he cannot recover the balance from the debtor. *Punamchand* v. *Temple*, [1911] 2 K. B. 330 (C. A.).

The principal case does not profess to alter the strict English rule as to the question of satisfaction by a third person, but follows a *dictum* of Willes, J., in declaring that payment not technically satisfaction may bar further recovery by the creditor. See *Cook* v. *Lister*, 13 C. B. N. S. 543, 594. Yet, in order to have that effect, the payment must be received in full discharge of the debt. It was formerly held by the Court of Appeal that whether or not a check or draft, offered in full settlement, was accepted as such is a question of fact to be decided by the trial judge or jury. *Day* v. *McLea*, 22 Q. B. D. 610. The principal case

[11] Thorne *v.* Cosand, 160 Ind. 566, 67 N. E. 257.

[12] The words are practically synonymous according to modern use. See Stolenburg *v.* Diercks, 117 Ia. 25, 29, 90 N. W. 525, 526.

[13] See State *v.* Payne, 129 Mo. 468, 477, 31 S. W. 797, 798.

[14] McLaughlin *v.* Bank of Potomac, 7 How. (U. S.) 220.

[15] See Sisk *v.* Smith, 6 Ill. 503, 511. In Pennsylvania it is otherwise by statute. See Porter *v.* Lazear, 109 U. S. 84, 86, 3 Sup. Ct. 58, 59.

[16] See Hill's Admrs. *v.* Mitchell, 5 Ark. 608, 618.

[17] "The dissimilarity in the origin, character and duration of the two estates (that of the widow and the heir) must be plain to every apprehension." See Sutherland *v.* Sutherland, 69 Ill. 481, 486. This conclusion is not weakened when, as in the principal case, there is a statute limiting the right of dower to those lands of which the husband died seised. Such a statute, in derogation of the common law, cannot be held to change the nature of dower unless it expressly so provides. It must be confessed, however, that if both this statute and the Pennsylvania statute in note 15 were in effect in the same jurisdiction, from an analytical point of view it would be hard to distinguish such an emasculated dower from a form of inheritance like the *pars legitima* of the Civil Law.

[18] See Estate of Moore, 57 Cal. 437, 442.

[19] *In re* Kennedy's Estate, *supra*.